

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING NADZEYA OSTAPCHUK
BORN ON 28 OCTOBER 1980, BELARUS, ATHLETE, ATHLETICS**

(Rule 59.2.1 of the Olympic Charter)

Pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (the “**Rules**”) and, in particular but without limitation, Articles 2, 5.1, 7.3.3, 8 and 9 thereof:

I. FACTS

1. Nadzeya OSTAPCHUK (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. On 16 August 2008, the Athlete competed in the Women’s shot put event in which she ranked 3rd and for which she was awarded a bronze medal.
3. On the same day, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with the number 1843807.
4. The A-Sample 1843807 was analysed during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing. Such analysis did not result in an adverse analytical finding at that time.
5. After the conclusion of the 2008 Olympic Games, all the samples collected upon the occasion of the 2008 Olympic Games were transferred to the WADA-accredited “Laboratoire suisse d’analyse du dopage” in Lausanne, Switzerland (“the **Laboratory**”) for long-term storage.
6. The IOC decided to perform further analyses on samples collected during the 2008 Olympic Games. These additional analyses were notably performed with improved analytical methods using more sensitive equipment and/or searching for new metabolites in order to possibly detect Prohibited Substances which were not identified by the analysis performed at the time of the 2008 Olympic Games.
7. In accordance with the provisions of the applicable International Standards for Laboratories (the “**ISL**”), the IOC decided that the reanalysis process would be conducted as follows:
 - An initial analysis was to be conducted on the remains of the A-samples
 - If such initial analysis resulted in the indication of the potential presence of a Prohibited Substance or its Metabolites or Markers (“Presumptive Adverse Analytical Finding” - PAAF), the full confirmation analysis process (double confirmation) was to be conducted on the B-Sample, which would be split for the occasion into a B1- and a B2 Sample (becoming thus the equivalent of an A- and B-Sample).
8. The decision to proceed based on split B-samples was made in principle for all the re-analysis.

9. This choice was made in view of the fact that during the transfer of the samples from the Beijing laboratory to the Laboratory, the A-Samples were not individually resealed nor transported in sealed containers.
10. At that time, resealing of A-Samples (or transport in sealed containers) was not a requirement pursuant to the applicable ISL (2008).
11. However, it was felt that the option to rely on the B-Sample constituted an additional precaution securing the strength and reliability of the analytical process.
12. A similar cautious approach was adopted with regard to the implementation of the analytical process and notably of its first phase (opening and splitting of the B-Sample into a B1- and B2-Sample, sealing of the B2-Sample and analysis of the B1-Sample).
13. Pursuant to the ISL, the presence of the Athlete is not a requirement for such first phase of the B-Sample analysis.
14. The IOC nevertheless decided, once again as a matter of principle, that, whenever this was practically possible, the Athlete would be offered the opportunity to attend the above described first phase of the B-sample procedure.
15. The remains of the A-Sample of the Athlete were subject to initial analysis. Such analysis resulted in a Presumptive Adverse Analytical Finding (“**PAAF**”) as it indicated the potential presence of two Prohibited Substances: dehydrochloromethyltestosterone (turinabol) and tamoxifen.
16. On 12 July 2016, the Athlete through her NOC was informed of the PAAF and of the possibility to attend the opening and splitting of the B-Sample into a B1- and B2-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample.
17. On 16 July 2016, the Athlete sent directly to the IOC her completed PAAF Notification Appendix, in which she indicated that she would not attend the opening, splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample, neither personally nor through a representative.
18. In her PAAF Notification Appendix, the Athlete wrote the following comment:

“I won’t be present at the opening of the B sample since I don’t have this possibility. The representative won’t be present as well. Please send me a report results of the opening of the B sample on my personal e-mail.”
19. On 20 July 2016, the IOC informed the Athlete that the opening, splitting of the B-Sample and the sealing of the B2-Sample was scheduled to occur on 25 July 2016 at the Laboratory followed by the analysis of the B1-Sample.
20. The opening and splitting of the B-Sample, the sealing of the B2-Sample occurred on 25 July 2016 at the Laboratory.
21. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
22. As provided in the ISL, the opening and splitting was attended by an independent witness.

23. The results of the B1-Sample analysis were reported on 28 July 2016. These results establish the presence of the metabolites of two Prohibited Substances, namely dehydrochlormethyltestosterone (turinabol) and tamoxifen.
24. Such results constitute an Adverse Analytical Finding (“**AAF**”). They were reported to the IOC in accordance with article 7.2.1 of the Rules.
25. Further to the verifications set forth in Art. 7.2.2 of the Rules and in application of Art. 7.2.3 of the Rules, the IOC President, Mr Thomas Bach, was informed of the existence of the AAF and the essential details available concerning the case.
26. Pursuant to Art. 7.2.4 of the Rules, the IOC President set up a Disciplinary Commission, consisting in this case of:
 - Mr Denis Oswald (Chairman, Switzerland), who is a member of the IOC Legal Affairs Commission
 - Mr Juan Antonio Samaranch (Spain)
 - Mr Ugur Erdener (Turkey)
27. On 29 July 2016, the IOC notified the Athlete of the above-mentioned AAF and of the institution of disciplinary proceedings to be conducted by the Disciplinary Commission. The IOC also informed the Athlete of her right to request and attend the opening of the B2-Sample and its analysis, either in person and/or through a representative, which was initially scheduled to take place on 8 or 9 August 2016. The Athlete was finally informed of her right to request a copy of the laboratory documentation package.
28. On 3 August 2016, the Athlete provided the IOC with her completed AAF Notification Appendix in which she did not indicate whether or not she accepted the Adverse Analytical Finding. She requested the opening and analysis of the B2-Sample and informed the IOC that she would not attend the process, neither personally nor through a representative. She finally requested a copy of the laboratory documentation package.
29. On 4 August 2016, the IOC informed the Athlete that the opening of the B2-Sample would take place on 9 August 2016 at the Laboratory followed by the analysis of the sample over the following days.
30. As planned, the opening of the B2-Sample occurred on 9 August 2016 in the presence of an independent witness, followed by the analysis.
31. The results of the B2-Sample analysis were reported to the IOC on 12 August 2016. They confirmed the presence in the B2-Sample of the metabolites of two Prohibited Substances, namely dehydrochlormethyltestosterone (turinabol) and tamoxifen.
32. On 16 August 2016, the IOC communicated to the Athlete the results of the B2-Sample analysis. The Athlete was also invited to indicate whether she accepted the Adverse Analytical Finding, whether she would attend the hearing of the Disciplinary Commission and/or she would submit a defence in writing. The Athlete was also informed of her right to request a copy of the laboratory documentation package.
33. On 20 August 2016, the Athlete sent to the IOC her completed Disciplinary Commission Form in which she did not indicate whether or not she accepted the Adverse Analytical Finding. She further indicated that she would not attend the hearing of the Disciplinary Commission, neither personally nor through a representative, and that she would not present her defence in writing.

34. In her Disciplinary Commission Form, the Athlete wrote the following comment:
- “I request copies of the B1 and B2 samples laboratory documentation package, as I did earlier, but haven’t got any answer yet. I would also ask you to send the above-mentioned documentation package on my personal email.”*
35. On 3 October 2016, the IOC provided the Athlete with a copy of the B1-Sample laboratory documentation package.
36. On 11 November 2016, the Athlete was provided with a copy of the B2-Sample laboratory documentation package. She was offered the possibility to present her defence in writing by 25 November 2016.
37. On the same day, the NOC and the IF were invited to file written observations within the deadline of 25 November 2016.
38. On 6 December 2016, the IOC sent a reminder and invited the Athlete to submit her written defence by 8 December 2016 at the latest.
39. The Athlete did not submit a written defence. Neither the NOC nor the IF filed written observations.

II. APPLICABLE RULES

40. These proceedings are conducted in application of the Rules.
41. Art. 2.1 of the Rules provides as follows:
- “The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s bodily Specimen.*
- 2.1.1 *It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping violation under Article 2.1.*
- 2.1.2 *Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample shall constitute an anti-doping rule violation.*
- 2.1.3 *As an exception to the general rule of Article 2.1, the Prohibited List may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.”*
42. Art. 2.2 of the Rules provides as follows:
- “Use or Attempted Use of a Prohibited Substance or a Prohibited Method*
- 2.2.1 *The success or failure of the Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be used for an anti-doping rule violation to be committed.”*

43. Art. 5.1 of the Rules provides as follows:

“The IOC is responsible for Doping Control during the Period of the Olympic Games. The IOC is entitled to delegate all or part of its responsibility for Doping Control to one or several other organisations.

The Period of the Olympic Games, or In-Competition Period, is defined as “the period commencing on the date of the opening of the Olympic village for the Olympic Games, namely, 27 July 2008 up until and including the day of the closing ceremony of the Olympic Games, namely, 24 August 2008.

All Athletes participating at the Olympic Games shall be subject, during the Period of the Olympic Games, to Doping Control initiated by the IOC at any time or place, with No Advance Notice. Such Doping Control may include Testing for all Prohibited Substances and all Prohibited Methods referred to in the Prohibited List.

The IOC shall have the right to conduct or cause to conduct Doping Control during the Period of the Olympic Games, and is responsible for the subsequent handling of such cases.”

44. Art. 7.3.3 of the Rules provides as follows:

“Notice to an Athlete or other Person who has been accredited pursuant to the request of the NOC, may be accomplished by delivery of the notice to the NOC. Notification to the Chef de Mission or the President or the General Secretary of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC.”

45. Art. 8.1 of the Rules provides as follows:

“A violation of these Rules in connection with Doping Control automatically leads to Disqualification of the Athlete with all other consequences, including forfeiture of any medals, points and prizes.”

46. Art. 9.1 of the Rules provides as follows:

“An Anti-Doping Rule violation occurring during or in connection with the Olympic Games may lead to Disqualification of all of the Athlete’s results obtained in the Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 9.1.1.”

47. Art. 9.1.1 of the Rules provides as follows:

“If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete’s results in the other Competition shall not be Disqualified unless the Athlete’s results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete’s anti-doping rule violation”.

48. Art. 9.3 of the Rules provides as follows:

“The management of anti-doping rule violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition of sanctions over and above those relating to the Olympic Games, shall be managed by the relevant International Federation”.

III. DISCUSSION

49. The presence of metabolites of two Prohibited Substances, i.e. dehydrochlormethyltestosterone (turinabol) and tamoxifen, has been established in 2016 in the sample 1843807 that the Athlete provided on 16 August 2008, upon the occasion of the 2008 Olympic Games.
50. Dehydrochlormethyltestosterone (turinabol) is an anabolic steroid. It is listed in the WADA 2008 Prohibited List and in all subsequent lists.
51. Tamoxifen is a selective estrogen receptor modulator (SERMs). It is listed in the WADA 2008 Prohibited List and all subsequent lists under S4.
52. The Disciplinary Commission is satisfied that the sample which has been re-analysed by the Laboratory is unequivocally linked to the Athlete and that no relevant departure from the WADA International Standards occurred.
53. Whilst the Athlete does not indicate whether she accepts or contests the analytical results, she does not bring forth any element, which could put the validity of the results in question.
54. The Disciplinary Commission thus finds that the Athlete has in any event committed an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of two Prohibited Substances in her body.
55. In addition, the Disciplinary Commission finds that an anti-doping rule violation would also be established if the circumstances are considered in the perspective of art. 2.2 of the Rules.
56. The Disciplinary Commission observes that the nature of the substances which were found in the Athlete's sample is consistent with intentional use of Prohibited Substances specifically ingested to deliberately improve performance. The fact that metabolites of dehydrochlormethyltestosterone (turinabol), which is a "classical" doping substance was found, supports this consideration.
57. The finding of a second Prohibited Substance, i.e. tamoxifen, also supports this conclusion.
58. The consequences of an anti-doping rule violation under the Rules are limited to consequences in connection with the 2008 Olympic Games. They are set forth in Art. 8 and 9 of the Rules and are the following.
59. In application of Art. 8.1 and/or Art. 9 of the Rules, the results achieved by the Athlete at the Women's shot put event in which she ranked 3rd during the 2008 Olympic Games shall be annulled, with all resulting consequences (notably withdrawal of medal, medallist pin, diploma etc.).
60. In application of Art. 9.3 of the Rules, the further management of the consequences of the anti-doping rule violations and in particular the imposition of sanctions over and above those related to the Olympic Games 2008 shall be conducted by the International Association of Athletics Federations ("**IAAF**").

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CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 and, in particular, 2, 5.1, 7.3.3, 8 and 9 thereof.

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete, Nadzeya OSTAPCHUK:
 - (i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (presence and/or use, of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
 - (ii) is disqualified from the Women's shot put event in which she participated upon the occasion of the Olympic Games Beijing 2008,
 - (iii) has the medal, the medallist pin and the diploma obtained in the Women's shot put event withdrawn and is ordered to return the same.
- II. The IAAF is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The National Olympic Committee of the Republic of Belarus shall ensure full implementation of this decision.
- IV. The National Olympic Committee of the Republic of Belarus shall notably secure the return to the IOC, as soon as possible, of the medal, the medallist pin and the diploma awarded in connection with the Women's shot put event.
- V. This decision enters into force immediately.

Lausanne, 10 January 2017

In the name of the IOC Disciplinary Commission



Juan Antonio Samaranch



Denis Oswald, Chairman



Ugur Erdener